

Janki and ors. Vs. Emperor

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Court : Kolkata

Decided On : May-12-1909

Reported in : 5Ind.Cas.769

Judge : Lawernce Jenkins, C.J. and ;Mookerjee, J.

Appellant : Janki and ors.

Respondent : Emperor

Judgement :

1. This is an appeal by fifteen accused who were convicted on a trial held by the Assistant Sessions Judge of Patna, sitting with a jury, and it is sought to support this appeal on the grounds, that there has been a misjoinder of charges which vitiates the whole proceedings, that there has been a misdirection to the jury resting on mis-reception of evidence; and lastly that, so far as two of the accused are concerned, Nos. 14 and 15, there has been no proper direction as to the elements necessary to constitute an offence under Section 412 of the Indian Penal Code. Notwithstanding the very ingenious arguments that have been addressed to us, we hold that the appeal must fail. This is a case in which fifteen accused are charged under Section 895 of the Indian Penal Code. Three of these accused are also charged under Sections 411 and 412, on the strength of an incident which is part of the evidence against them on the charge under Section 395; and it would be an undue extension of the authorities cited to us were we to assent to the view that they compel us to the conclusion for which the appellant's pleader contends,

and in so saying we do not overlook the argument that has been based on the two cases, Budhai Sheikh v. Emperor 33 C. 292 : 10 C.W.N. 32 : 3 Cr. L.J. 126 and Abdul Majid v. Emperor 33 C. 1256 : 3 C.L.J. 412 : 3 Cr. L.J. 391 which contain expressions of opinion in some measure helpful to a part of the appellant's argument.

2. So far as it is claimed that there was a misdirection in treating the statements of certain accused as confessions, we hold that they were rightly so treated, and they were not mere exculpatory statements.

3. Then it is said that there was misreception of evidence, in so far as the statements accompanying Prosad Roy's conduct were admitted. These statements are two in number. The first clearly comes within the scope of Section 27 of the Evidence Act, and the second statement, though not properly evidence, cannot be said in fact to have occasioned a failure of justice within the meaning of Section 537, Criminal Procedure Code, having regard to the evidence in the case and to the manner in which the learned Judge in the course of his charge dealt with this point.

4. It only remains to notice the objection that the Judge did not properly charge the jury as to the elements necessary for a verdict of guilty against accused Nos. 14 and 15 under Section 412. If the whole of the summing up be looked at, it is clear that the Judge placed before the jury a most careful statement of what was necessary to constitute an offence under Section 412 and in the circumstances it appears to me impossible to contend that there has been misdirection in this regard.

5. The result is that the appeal must be dismissed.